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Before the
FEDERAL COMMUNICATION COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATION COMMISSION
OFFICE OF SECRETARY

In the Matter of

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Implementation of Section 703)
of the Telecommunications Act of 1996) CS Docket No. 96-166
Amendments and Additions to the)
Commission's Rules Governing)
Pole Attachments)

**OPPOSITION OF THE ASSOCIATION FOR
LOCAL TELECOMMUNICATIONS SERVICES**

The Association for Local Telecommunications Services (ALTS), pursuant to the Public Notice contained in the Federal Register on October 1, 1996, hereby submits its opposition to the Request for Clarification and Reconsideration of the Report and Order filed by Delmarva Power & Light Company (Delmarva) in the above-captioned proceeding.

ALTS is the non-profit national trade association representing competitive providers of local telecommunications services. ALTS' membership includes over thirty non-dominant providers of competitive access and local exchange services that deploy innovative technologies in many areas across the country.

In order to provide competitive access and local exchange services, the members of ALTS must have access to the poles, ducts, conduits and rights of way used by utilities. Without such access, the members of ALTS would be severely limited in their ability to provide service. Thus, they have an interest in

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ensuring that the pole attachment provisions of the Telecommunications Act of 1996 are implemented in a manner that is consistent with the letter and spirit of the Act.

The Order for which Delmarva seeks clarification and reconsideration was adopted without prior public notice or an opportunity for comment because the rule modifications were necessary to conform the Commission's rules to the applicable provisions of the '96 Act. It is clear that the Commission's analysis of the lack of need for comment is correct.

Delmarva seeks clarification of the definition of "utility" in amended Section 224(a) of the '96 Act as incorporated in 47 C.F.R. § 224(a). The definition contained in the statute and the regulations is identical.¹ Delmarva complains that

This definition requires a utility to allow a cable television system or a provider of telecommunications service to access a utility's right-of way, even if undeveloped, simply because the utility may own poles with wire communications attachments somewhere in the system. Delmarva questions whether it was the intent of Congress or the Commission to require a utility to develop infrastructure on bare rights-of-way for use of a cable system or a provider of telecommunications service. The Commission should clarify the definition so that a utility is not required to create the infrastructure on unimproved rights-of-way to accommodate cable and telecommunications providers. (Request at 2-3)

The problem with Delmarva's request is that it is, in

¹ The Act and the regulations define "utility" as "any person who is a local exchange carrier of an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communication." (emphasis added).

effect, a request that the Commission rewrite the statute. This the Commission may not do, even if it wanted to. All the Commission has done is to adopt, word for word, the statute's definition of "utility". This is not only proper, but necessary.

The members of ALTS certainly agree with Delmarva on its reading of the statute. It is clear that Congress was aware of the potential for utilities to favor their own telecommunications services over those provided by other carriers seeking to use the utilities' poles, ducts, conduit and rights of way. The incentive for the companies to discriminate against competitors exists throughout a system not just in areas in which poles happen to have telecommunications facilities attached thereto. Congress' enactment of the Telecommunications Act of 1996 was a balancing of many interests and a recognition of the realities of the marketplace. It must be remembered that in addition to requiring nondiscriminatory access to poles, ducts and conduit owned by utilities that compete in telecommunications, Congress amended the Public Utility Holding Company Act to allow certain utilities to enter the telecommunications field for the first time. The '96 Act is clearly a balanced approach and answer to a number of competing interests.

Therefore, the Commission should deny Delmarva's petition to the extent that it seeks to restrict access to utilities' poles, ducts and rights of way in a manner that is clearly inconsistent

with the Telecommunications Act of 1996.

Respectfully submitted,

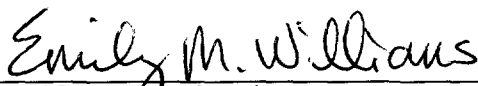
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October 21, 1996

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Opposition of the Association for Local Telecommunications Services was served October 21, 1996, on the following persons by hand service or by U.S. mail, postage prepaid.


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